



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer Michael Jacobsen	:	ORDER
Tax Registry No. 920424	:	OF
121 Precinct	:	DISMISSAL

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Police Officer Michael Jacobsen, Tax Registry No. 920424, Shield No. 02662, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2020-22443, as set forth on form P.D. 468-121, dated July 22, 2020, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Michael Jacobsen from the Police Service of the City of New York.

  
DERMOT F. SHEA  
POLICE COMMISSIONER

EFFECTIVE:

8/20/2020



POLICE DEPARTMENT

August 12, 2020

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In the Matter of Charges and Specifications	:	Case No.
- against -	:	2020-22443
Police Officer Michael Jacobsen	:	
Tax Registry No. 920424	:	
121 Precinct	:	

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At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.  
Department Advocate's Office  
One Police Plaza, Room 402  
New York, NY 10038

For the Respondent: Tried *in absentia*

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

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## CHARGES AND SPECIFICATIONS

1. Said Police Officer Michael Jacobsen, while assigned to the 121st Precinct, having been ordered lawfully on July 22, 2020 by members of the Internal Affairs Bureau to report for and submit to an official Department interview to be conducted by members of the Internal Affairs Bureau later that day, wrongfully refused to and failed to comply with said order

P.G. 203-03, Page 1, para. 2

COMPLIANCE WITH ORDERS

## SUMMARY OF FINDINGS AND RECOMMENDED PENALTY

The Department called Sergeant John Rosa and Lieutenant Ewa Lapinska as witnesses.

Respondent did not appear for trial and was tried *in absentia* on August 3, 2020. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, I find Respondent Guilty of failing to obey an order to answer questions during an official Department interview and recommend that Respondent's employment with the Department be terminated.

## ANALYSIS

### Justification for Hearing *in Absentia*

In a letter dated July 21, 2020, and signed by Respondent, Respondent authorized Stuart London, Esq. of Worth, Longworth and London, LLP, to accept service of process of any department charges issued by the New York City Police Department. This authorization specifically included any charges related to a failure to appear at a GO-15 hearing. (Dep't. Ex. 2)

On July 27, 2020, Department attorney David Green sent an email to Mr. London, with a subject of "PO Michael Jacobsen – C&S for Cases 2020-22379, 2020-22442 & 2020-22443," attaching charges and specifications for the three cases for Respondent. This included the instant case-- *Disciplinary Case No. 2020-22443*. Mr. Green also attached an audio recording and a

POLICE OFFICER MICHAEL JACOBSEN

transcript of Respondent being ordered to appear for a GO-15. On the same date, Mr. London replied by email to Mr. Green that he acknowledged receipt of the items. (Dep't. Ex. 3)

In an email from Mr. London to Mr. Green dated July 28, 2020 with a subject of "Re: PO Michael Jacobsen - C&S for Cases 2020-22379, 2020-22442 & 2020-22443," Mr. London stated that he communicated with his client that his trial date is August 3rd and that his client "understands the charges against him and will not be present for his trial." (Dep't. Ex. 1)

Based on the review of the evidence, I find that Respondent authorized his attorney, Mr. London, to accept service of the charges and specifications. Mr. London was served with the charges and specifications for this case on July 27, 2020 and he confirmed that he did receive the charges and specifications. On July 28, 2020, Mr. London further indicated that Respondent understood the charges and that Mr. London notified Respondent that the trial date was scheduled for August 3, 2020. Mr. London advised the Department that Respondent would not be present for the trial. Based on the above, Respondent's disciplinary trial was conducted *in absentia*, in accordance with the Rules of the City of New York, Title 38, Section 15-04 (d).

Failure to Comply with Lawful Order to Submit to Interview

Respondent is charged with wrongfully refusing to comply with a lawful order to report for and submit to an official Department interview on July 22, 2020, after having been ordered by members of the Internal Affairs Bureau to do so.

Lieutenant Ewa Lapinska testified that on July 21, 2020, she and Sergeant Rosa met with Respondent at his girlfriend's house in New Jersey. While there, Lieutenant Lapinska ordered Respondent to appear for an official Department interview on July 22, 2020, at 1000 hours. Respondent was also given a written notification to appear for the interview. (Tr. 30-32, Dep't. Ex. 5)

Sergeant Rosa and Lieutenant Lapinska both testified that on July 22, 2020, they travelled to the 123 precinct and again met with Respondent. Sergeant Rosa asked Respondent if he wanted to go with them to his "P.G." hearing scheduled for 1000 hours. The transcript of this conversation indicates that Respondent told Rosa and Lapinska that he would "plead the Fifth on an ongoing criminal case," and Lapinska told him, "That P.G. hearing is going to have nothing to do with the criminal case." She then explained that they instead wanted to talk about his failed drug test. Respondent initially indicated that he would go with them. He then called his attorney, Mr. London, and afterwards informed them that he was not going to attend the hearing. After Respondent concluded his call, Lieutenant Lapinska stated to Respondent, "So, just to follow up, we are telling, ordering you to go with us to the P.G." She further stated to Respondent, "So as a matter of law, you're going to be suspended for failure to obey a lawful order and for the drug test, failure of the drug test." Respondent replied, "Okay." Respondent was then re-suspended. (Tr. 20-22, 33-34, Dep't. Ex 4A, 2-5)

The uncontested evidence supports a finding that Respondent received clear and unambiguous orders to appear at an official Department interview on July 22, 2020, and that Respondent failed to comply with that order. He was ordered to appear verbally on both July 21st and July 22nd by a superior officer, Lieutenant Lapinska. He was also given a written notification to appear. Respondent was clearly told he would be suspended for refusing to obey a lawful order and he was suspended for failing to attend the GO-15.

Patrol Guide Section 203-03, page 1, paragraph 2, requires that members of the service "obey lawful orders and instructions of supervising officers." It is a basic tenet of public employment law that employees are generally required to "obey now, grieve later." There are very limited exceptions to this principle. An employee need not obey an unlawful order, an order that is beyond the scope of a supervisor's authority, or an order that poses an imminent

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threat to health or safety. *See Ferreri v. NY State Thruway Authority*, 62 N.Y. 2d 855 (1984); *see also Reisig v. Kirby*, 62 Misc.2d 632 (Sup. Ct. Suffolk County 1968) *aff'd*, 31 A.D.2d 1008 (2nd Dep't 1969). None of these exceptions apply in this case. Therefore, Respondent is found guilty of Specification 1.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on December 8, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

This court has long held that failure to comply with an order to cooperate at an official Department interview is grounds for termination. *See Disciplinary Case No. 2016-15216* (Feb. 10, 2016) (Twenty-four year lieutenant dismissed from the Department for failing to comply with an order on two separate dates to appear at an official Department interview); *see also Disciplinary Case No. 2016-15664* (May 18, 2016) (Twenty-six year detective with no disciplinary record dismissed for failing to comply with orders to appear at an official Department interview and to appear at his resident precinct each Monday, Wednesday and Friday). The Department is a paramilitary organization. A failure to obey orders completely undermines the Department's ability to carry out its mission and is not acceptable.

Based on the evidence presented in this case and the analysis above, I recommend that Respondent be Dismissed from the New York City Police Department.

Respectfully submitted,

*Nancy Ryan (by JAA)*

Nancy R. Ryan

Assistant Deputy Commissioner Trials

**APPROVED**

AUG 28 2020

*[Signature]*

DERMOT SHEA

POLICE COMMISSIONER





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER MICHAEL JACOBSEN  
TAX REGISTRY NO. 920424  
DISCIPLINARY CASE NO. 2020-22443

Respondent was appointed to the Department on December 8, 1997. On his last three annual performance evaluations, he received 4.0 overall ratings of "Highly Competent" in 2014, 2015 and 2016. He has received one medal for Excellent Police Duty and one medal for Meritorious Police Duty.

[REDACTED]

Respondent has no formal disciplinary history. In connection with another pending disciplinary matter, Respondent was suspended from July 9, 2020 to July 22, 2020. He was subsequently suspended again on July 22, 2020 in relation to the instant matter.

For your consideration.

*Nancy R. Ryan (by JJA)*

Nancy R. Ryan  
Assistant Deputy Commissioner Trials